TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITE STATES.

No. 2[illegible]7

WILLIAM WARD AND FRANCIS T. WARD, PLAINTIFFS IN ERROR,

vs.

FRANCIS L. SMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

[illegible]

SUPREME COURT OF THE UNITED STATES.

No. 265.

WILLIAM WARD AND FRANCIS X. WARD, PLAINTIFFS IN ERROR.

vs.

FRANCIS L. SMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, (being the first day of the same month,) in the year of our Lord one thousand eight hundred and sixty-seven.

Present, the honorable William F. Giles, judge Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal.

JAMES W. CHEW, *Clerk.*

Among other were the following proceedings, to wit:

FRANCIS L. SMITH
vs.
WILLIAM WARD AND FRANCIS X. WARD.

Be it remembered, that heretofore, to wit, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and sixty-six, the said Francis L. Smith, by Robert J. Brent, esquire, his attorney, prosecuted and sued forth out of the circuit court here, the writ of the United States of America of capias ad respondendum, directed to the marshal of Maryland, district aforesaid, in the words and of the tenor following, to wit:

Writ.

2 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

We command you, that you summon William Ward and Francis X. Ward, citizens of the State of Maryland, that all excuses and delays set aside, they be and appear before the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the United States court-room, in the city of Baltimore, on the first Monday in April next, to answer unto Francis L. Smith, a citizen of the State of Virginia, of a plea that the said defendants render unto the said plaintiffs, the sum of fifteen thousand dollars, current money, which to the said plaintiff they owe and from him unjustly detain, &c. Hereof you are not to fail at your peril, and have you then and there this writ. Witness, the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] JAMES W. CHEW,
Clerk Circ't Ct.

Issued March 17, '66.
R. J. B.
REC. 265—1

And the aforesaid Francis L. Smith, by his attorney aforesaid, on the day of prosecuting and suing forth of the aforegoing writ,
3 declared against the William Ward and Francis X. Ward, in the plea aforesaid, in form following, to wit:

Declaration.

Circuit court of the United States, in and for the district of Maryland, to wit:

William Ward and Francis X. Ward, (late of the district aforesaid,) citizens of the State of Maryland, were summoned to answer unto Francis L. Smith, a citizen of the State of Virginia, of a plea that the said defendants render unto the said plaintiffs the sum of fifteen thousand dollars, current money, which to the said plaintiff they owe and from him unjustly detain, and so forth. And, whereupon, the said plaintiff, a citizen of the State of Virginia, by Robert J. Brent, his attorney, saith, that whereas the said defendants, citizens of the State of Maryland, on the 22d day of August, A. D. 1860, at Alexandria, to wit: at the district aforesaid, by their certain writing obligatory, acknowledged themselves to be held and firmly bound unto the said plaintiff in the sum of four thousand four hundred and eighty-eight dollars and sixty-seven cents, current money, to be paid to the said plaintiff, by the name of Francis L. Smith, administrator, with the will annexed of Aaron Leggett, six months after the date thereof,
with interest from date, payable at the office of discount and
4 deposit of the Farmers' Bank of Virginia. And whereas, also, the said defendants afterwards, that is to say, on the 22 day of August, A. D. 1860, at Alexandria, to wit, at the district aforesaid, by their certain writing obligatory, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of four thousand four hundred and eighty-eight dollars and sixty-seven cents, current money, to be paid to the said plaintiff, by the name of Francis L. Smith, administrator, with the will annexed of Aaron Leggett, twelve months after the date thereof, with interest from date, payable at the office of discount and deposit of the Farmers' Bank of Virginia.

And whereas, also, the said defendants afterwards, that is to say, on the 22nd day of August, A. D. 1860, at Alexandria, to wit, at the district aforesaid, by their certain writing obligatory, acknowledged themselves to be held and firmly bound unto the said plaintiff in the sum of four thousand four hundred and eighty-eight dollars and sixty-seven cents, current money, to be paid to the said plaintiff, by the name of Francis L. Smith, administrator, with the will annexed of Aaron Leggett, eighteen months after the date thereof, with interest from date, payable at the office of discount and deposit of the Farmers' Bank of Virginia.

Nevertheless the said defendants, (although often there-
5 unto required,) the said sum of $15,000, current money, to the said plaintiff, to render or pay, he, the said defendant, hath hitherto altogether refused and still doth refuse, wherefore the said

plaintiff saith he is the worse, and hath damage to the value of $15,000 current money, and therefore he brings suit, and so forth. And the said plaintiff brings into court here the several writings obligatory aforesaid, sealed with the seals of the said defendants, which testify the debt aforesaid, in form aforesaid, the dates whereof are the same days and years in that behalf above mentioned, and so forth.

ROBERT J. BRENT, *for Pl'ff.*

[50 cts. U. S. rev. stamp.]

A copy of which said declaration was made and sent with the said writ to the marshal of the Maryland district aforesaid, thereon endorsed, to wit: "Case copy nar within to be served on the defendant with the writ."

At which mentioned first Monday in April, in the year of our Lord one thousand eight hundred and sixty-seven, being the day of the return of the aforegoing writ, comes into the circuit court here, the said Francis L. Smith, by their attorney aforesaid, and the marshal of the Maryland district aforesaid, to wit: Washington Bonifant, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit.

Summoned:

W. BONIFANT,
U. S. Marshal.

6 And the said William Ward and Francis X. Ward, being called, appear in court here, by William George Brown and Frederick W. Brune and Arthur George Brown esquires, their attorneys. And thereupon, on motion of the said Francis L. Smith, by his attorney aforesaid, it is ruled by the court here that the said William Ward and Francis X. Ward answer to the declaration aforesaid of the said Francis L. Smith, on the plea aforesaid, or judgment by the court here will be entered against them in default thereof.

And the said William Ward and Francis X. Ward by their attorneys aforesaid, defend the force and injury when, &c., and pray leave of the court here to imparle until the first Monday of November next, and they have it; the same day is given to the said Francis L. Smith, then and there, &c.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and sixty-six, until which day the said William Ward and Francis X. Ward had leave to imparle, and then to answer to the declaration of the said Francis L. Smith, in the plea aforesaid, comes again into the circuit court here, the parties aforesaid, by their attorneys aforesaid.

And the said William Ward and Francis X. Ward, by their attorneys aforesaid, pray leave of the court here further to imparle until *until* the first Monday of April next, and they have it; the same day is given to the said Francis L. Smith, then and there, &c.

7 At which said first Monday in April, in the year of our Lord one thousand eight hundred and sixty-seven, until which day

the said William Ward and Francis X. Ward had leave to imparle, and then to answer the declaration of the said Francis L. Smith, on the plea aforesaid, comes again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And the said William Ward and Francis X. Ward, by their attorneys aforesaid, files in the circuit court here the following plea and agreement, to wit:

Plea.

WILLIAM WARD & FRANCIS X. WARD
vs.
FRANCIS L. SMITH.

In circuit court of U. S. in and for the district of Maryland.

And the said William Ward and Francis X. Ward, by Brown and Brune, and Arthur Geo. Brown, their attorneys, come and defend the wrong and injury, when, &c.

And say that they do not owe to said plaintiff the said sums of money above demanded, or any part thereof, in manner and form as the said plaintiff above against them has declared, and of this they put themselves on the country, &c.

BROWN & BRUNE,
ARTHUR GEO. BROWN,
for Defendants.

8 It is agreed that all errors of pleading on both sides are waived, and that plaintiffs and defendants may give in evidence therein any facts which would be admissible under any form of pleading.

R. J. & J. L. BRENT,
for Pl't'ff.
BROWN & BRUNE,
ARTHUR GEO. BROWN,
for Def'ts.

Issue.

And the said plaintiff doth the like. Therefore, let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons, from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties; and the counsel for each of the said parties, having stricken out four persons

from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

John B. Holmes, George L. Shipley, Thomas D. Watkins, Joshua Plasket, Jacob Beckley, Thomas Elliott, William Counselman,
9 Julius B. Barrett, William N. Burch, William Snyder, Richard Hutchins, and Jacob A. Preston, who, being empannelled and sworn to say the truth in the premises, upon their oath do say.

Verdict.

That the said William Ward and Francis X. Ward do owe to the said Francis L. Smith the said sum of fourteen thousand three hundred and ten dollars, above demanded, in manner and form as the said Francis L. Smith hath above complained against them, and they assess the damages of the within named Francis L. Smith, by occasion of the detention of the said debt, over and above his costs and charges by him about this suit, expended to the sum of fourteen thousand three hundred and ten dollars.

Judgment.

Therefore, it is considered by the court here, that the said Francis L. Smith recover against the said William Ward and Francis X. Ward, as well the said sum of fourteen thousand three hundred and ten dollars his debt aforesaid, as the sum of for his costs and charges by him about his suit in this behalf expended, and that he have thereof his execution against the said William Ward and Francis X. Ward, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said William Ward and Francis X. Ward, by their
10 attorneys aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

Bill of exceptions.

In the circuit court of the U. S. for the district of Maryland.

FRANCIS L. SMITH
vs.
WILLIAM WARD AND FRANCIS X. WARD.

The plaintiff to sustain the issue on his part joined, offered in evidence three bonds, the execution of which by the defendants was admitted and which bonds are as follows:

$4,488 67-100. FAIRFAX COUNTY, *Virginia.*

Six months after date, we bind ourselves jointly and severally, our and each of our heirs and personal representatives, to pay to Francis L. Smith, administrator, with the will annexed of Aaron Leggett,

dec'd, the sum of four thousand four hundred and eighty-eight dollars and sixty-seven cents, with interest thereon, from the date hereof, payable at the office of discount and deposite of the Farmers' Bank of Virginia, at Alexandria.

Given under our hands and seals this 22d day of August, 1860.

(Signed) WM. WARD. [SEAL.]
(Signed) FRANCIS X. WARD. [SEAL.]

Witness:
(Signed) JNO. V. RILLONMONIER.

Upon the back whereof appear the following endorsements:
11 "August 31, 1860, cr. by cash, as per receipts, ($518 78,) five hundred and eighteen dollars and seventy-eight cents." (Heavy erasures.)

FRANCIS L. SMITH, *Adm'r.*

$4,488 67-100. FAIRFAX COUNTY, *Virginia.*

Twelve months after date we bind ourselves jointly and severally, our and each of our heirs and personal representatives, to pay to Francis L. Smith, administrator, with the will annexed, of Aaron Leggett, dec'd, the sum of four thousand four hundred and eighty-eight dollars and sixty-seven cents, with interest thereon from the date hereof, payable at the office of discount and deposite of the Farmers' Bank of Virginia, at Alexandria. Given under our hands and seals this 22d day of August, 1860.

(Signed) WM. WARD. [SEAL.]
(Signed) FRANCIS X. WARD. [SEAL.]

Witness:
(Signed) JNO. V. R. MONMONIER.

$4,488 67-100. FAIRFAX COUNTY, *Virginia.*

Eighteen months after date we bind ourselves jointly and severally, our and each of our heirs and personal representatives, to pay to Francis L. Smith, administrator, with the will annexed, of Aaron Leggett, dec'd, the sum of four thousand four hundred and eighty-eight dollars and sixty-seven cents, with interest thereon from the date hereof, payable at the office of discount and deposite of the Farmers' Bank of Virginia, at Alexandria.

Given under our hands and seals, this 22d day of August, 1860.
12 (Signed) WM. WARD. [SEAL.]
(Signed) FRANCIS X. WARD. [SEAL.]

Witness:
(Signed) JNO. R. V. MONMONIER.

On the back of the first bond, and immediately following the endorsements appearing thereon, were certain other endorsements, which have been cancelled by heavy marks in ink, so as to be entirely illegible.

The plaintiff then offered in evidence, by William Marbury, that for a number of years, and up to the 19th of January, 1867, he was cashier of the office of discount and deposit of the Farmers' Bank of Virginia, at Alexandria; that the bond first given in evidence, payable six months after date, was deposited for collection by the plaintiff in said office of discount and deposit, on the 6th of February, 1861; and that, when so deposited, the endorsement of a credit for $518 78, signed by the plaintiff, had been written thereon. Subsequently the following payments were made by the defendant, William Ward, to said bank, to the credit of the plaintiff, as administrator of Aaron Leggett, deceased, to wit: on the 18th of July, 1861, $3,500; on the 27th of December, 1861, $3,151; on the 26th of March, 1862, $925; and on the 29th of March, 1862, $75. Said payments were entered on the blotter of said bank, in the following words and figures:

F. L. Smith, adm'r Aaron Leggett, dec'd:

	1861.	July 18—	$3,500, by Wm. Ward.
13		Dec. 27—	3,151, on bond Wm. W. & F. X. Ward, for $4,488 67, due Feb'y 19, 1861.
	1862.	M'ch 26—	925, by Wm. W. & F. X. W.
		" 31—	75, by Wm. W. & F. X. W., deposited 29 March.
			$7,651.

And said payments were also by the witness endorsed on the said bond first given in evidence, but witness cannot say positively that the last two payments were credited on said bond, although it is his impression that they were.

The first two payments, credited as above on said blotter, were made by said William Ward to witness, and the entries thereon are in the handwriting of witness; the other two entries are in the handwriting of the book-keeper of the bank. All the payments were made in notes of banks of the State of Virginia. When the said bond was left for collection no particular instructions were given by the plaintiff; it was left as in the ordinary course of business. The plaintiff left Alexandria soon after depositing said bond, and witness had no communication with him about the deposits or payments made by Ward to his credit until his return to Alexandria in July, 1865, when witness first informed him of the same. The plaintiff then told witness that he did not authorize said payments, and that he repudiated them; and then, without the request or knowledge of the plaintiff, witness erased said credits from the back of said first men-
14 tioned bond. And shortly after this, seeing Ward, witness informed him that Smith repudiated these payments. The other two bonds were never deposited for collection in witness' bank. The first deposit was made by Ward in July, 1861, about six weeks after the federal forces occupied Alexandria. Virginia bank notes were not current in Alexandria after the 24th of May, 1861, the date

of the federal occupation. In July, 1861, they were at a discount of twelve per cent., and in December, 1861, at twenty or twenty-five per cent. discount. Virginia bank notes are now worth twenty cents on the dollar; up to six months ago, they were redeemable at thirty cents in coin.

On the 18th of July, 1861, purchases could be made in Alexandria with Virginia bank notes, but the purchaser had to submit to a discount. The bank of which witness was cashier was not, at that time, making any collections for parties in Alexandria; for collections for parties out of town it received specie funds.

On cross-examination, the same witness stated that Francis L. Smith, the plaintiff, had been for a number of years a director of witness' bank at Alexandria. Witness is not sure whether he was or not on the 6th February, 1861. Plaintiff kept an account with witness' bank, as administrator of Leggett, who died in Georgia; and also a personal account. But before leaving Alexandria, in May, 1861, he
15 drew from bank the entire amount standing to the credit of both accounts.

Witness' bank suspended specie payment about the 20th of November, 1860. When this note was deposited for collection, 6th of February, 1861, drafts on Baltimore and New York were worth 3½ or 4½ per cent. premium.

The bank then paid its debts, and received payment of debts due the bank in Virginia bank notes, and so continued to do up to the twenty-first of March, 1867. The bank paid depositors in the same currency. If change was demanded for a bank note of large denomination the bank gave it in Virginia currency. The parent bank at Richmond, of which ours was a branch, declared the dividends.

In January, 1861, a dividend of 3½ or 4 per cent. was so declared, and was paid by our bank at Alexandria in Virginia notes. When collections for northern correspondents were made through our bank during the war, we collected in current funds, not Virginia bank notes. So little business was done that witness generally in such cases required northern drafts in payment of such claims, or else accepted Virginia funds, charging those who so paid the difference between Virginia funds and drafts on the northern cities. Witness pursued one or the other of these courses, at the option of those who paid. Our correspondents knew the rates of exchange as well
16 as we did, and generally gave special instructions as to the kind of funds to be received in payment of their claims. Some drafts were payable in Virginia funds, which we then accepted in such cases.

The only collection for a Virginia customer made by witness' bank between July 18, 1861, and March 31, 1862, was paid in Virginia funds. During that interval there was a difference of exchange in favor of N. York. We remitted to New York in New York funds; to Baltimore in Baltimore funds. We often had special instructions as to the money to be received. Sometime in '61 witness accepted payment for an overdrawn account in Va. funds. Up to 24 May 1861, the bank received payment of all debts in Virginia money.

In Jan., '61, drafts on Balt. commanded 3½ p. c., and on N. Y. 4½ p. c. premium. Witness fixes the 24th May, 1861, because that was the date of the federal occupation of Alexandria. Up to that time there was full communication with Richmond.

The bank continued to take Virginia money up to 21 March, 1867, in payment of debts due the bank, when our notes were worth only 25 cts. on the dollar. Most of the debts and claims of our banks were in Virginia.

The credits endorsed on the back of the first note were entered regularly on the blotter of the bank. The first two entries
17 were made by witness; the next two by the book-keeper.

Subsequently these entries were transferred to the day-book and ledger. The bank has different blotters for different kinds of entries. The entries referred to were made in the blotter for money paid. These entries are in the usual form of entries of money paid, and credited as paid.

Witness cannot assign any reason for not delivering the first note to Ward, when it was paid in full, by these several payments credited as described. Witness recollects nothing particularly about it; but Ward could not have asked for the note or he would have received it.

The marks in red ink on the back of the bond deposited in our bank indicate that said note was deposited for collection, and that it had not been discounted by the bank.

The federal forces held Alexandria continuously from the time of the first occupation until the end of the war. After the occupation Virginia paper no longer passed current; there was a marked difference in this respect after the occupation.

In marketing, the purchaser could buy more with coin than Virginia notes. If a purchaser paid for purchases in Virginia money he had to pay more. Witness recollects having bought silver for marketing, but does not remember the date. In July, 1865,
18 witness met Mr. William Ward, one of the defendants, in Baltimore, and told him that Smith had informed witness that he (Ward) had been to Alexandria with the intention of withdrawing the money, but could not find witness. Witness then told Ward that he could withdraw the money from the bank. Ward asked in what currency he would be paid. Witness told him in notes of the bank, then worth 30 cents on the dollar in coin. Ward's reply was substantially: "Let it stand; it is as safe there as *as* anywhere else." He did not say whether he would or would not withdraw it.

(Plaintiff's counsel here read a letter from F. L. Smith to Wm. Ward repudiating the payments as above referred to.)

ALEXANDRIA, *July* 7, 1865.

WM. WARD, Esq., Baltimore, Md.:

DEAR SIR: Yours of May 27th inst. was handed to me this afternoon by Wm. H. Marbury, esq. I am on the eve of leaving here for Amelia county, and expect to be absent some two or three weeks. I therefore regret my inability at this time to fix on a day, certain

when you would probably find me here. Mr. Marbury, in handing me your letter, informed me that since I saw you last you had left at the branch of the Farmers' Bank of Virginia, at Alexan-
19 dria, some bank notes, with directions to place the same to my account, as administrator of the estate of Aaron Leggett, dec'd. Now, I desire at once distinctly to say, that I do not recognize or sanction any such deposits with said bank, or otherwise holding myself alone bound by actual payments to myself individually, and for which you hold my receipts, on account of your indebtedness to the estate of Aaron Leggett, dec'd. The administration on said estate has, I learn, (tho' not officially,) passed into other hands since I saw you last.

Yours very respect'y, FRANCIS L. SMITH,
Individually, and as late Adm'r of the estate of Aaron Leggett dec'd.

The same witness, Marbury, being recalled in chief, continued as follows:

Witness had no communication with Smith about these deposits, from the beginning to the end of the war; but after the war, as soon as witness told him the facts, he repudiated the credits, and witness erased them from the back of the bond.

Re-cross-examined:

When the Baltimore banks withdrew their funds from the Alexandria banks, just prior to the war, they received Virginia notes. Prior to 24 May, 1861, the plaintiff Smith, administrator of Leggett, withdraw all the money on deposit to the credit of his ac-
20 count in our bank. $7,651 now stands to the credit of that account, being the amount of the collections before mentioned.

[NOTE.—It was here admitted, by consent of counsel, that the plaintiff, Francis L. Smith, went from Alexandria to Prince William co., Virginia, before 24 May, 1861, and remained within the confederate military lines during the whole war, but was never in the military service. Also, that Smith was a director of the office of discount and and deposit of the Farmers' Bank of Virginia, at Alexandria, prior to 1861, and was re-elected during that year. It was also admitted, by consent of counsel, that the banks in Baltimore suspended specie payment on the 30th of December, 1861, on which day the banks of New York, Philadelphia, and Boston likewise suspended. It was likewise admitted that the accompanying statement from Sam'l Harris & Co., brokers in the city of Baltimore, correctly sets forth the value of Virginia bank notes on the days therein mentioned.]

July 18th, 1861, Virginia bank notes sold at eleven per cent. discount.

December 27, 1861, Virginia bank notes sold at twenty-two and half p. c. discount

March 26 & March 31st, 1862, Virginia bank notes sold at twenty-three per cent. discount.

21 And the defendants, to sustain the issue on their part, joined, proved by A. J. Wickliffe, a competent witness, that he now resides in Balt., but that until 8th December, 1861, he was a resident of Alexandria. Witness had been a commission merchant on his own account in Alexandria, but during the year 1861 was book-keeper for Geo. H. Robinson, one of the largest grocery and commission houses in that town. Robinson left Alexandria in May, 1861, and witness disposed of his stock of goods and wound up his business. In payment for goods sold, witness received Virginia notes and gold; also paid the debts of the house in both kinds of currency; has no positive recollection of paying any debts of the house in gold, but certainly did in Virginia notes. Witness, in selling goods, made a difference in the price according to whether gold or bank notes were tendered in payment. A few days before leaving Alex'a, in December, 1861, witness sold all the goods on hand for Virginia money, at 15 p. c. discount. Witness, a short time before leaving Alexandria, bought clothes for Virginia money. Witness always used Virginia money when he could; never had any difficulty about it. Took specie to market. Witness paid out for Robinson's house a small amount, but received on account of his house several thousand dollars. After the federal occupation until witness left Alexan-
22 dria, gold was gradually but constantly rising in price.

Wickliffe witness

And on cross-examination, the same witness testified as follows: That he had sold no goods to soldiers, and that when he bought the clothes referred to, it was specially agreed that he was to pay for for them in Virginia money.

And the defendants further proved, by ——— McCormack, a competent witness, that he now lives in Baltimore, but for a number of years prior to September, 1866, was a resident of Alexandria.

McCormack witness

Witness was secretary of the Alexandria Insurance Co., from 1 May, 1861, until 1863; the capital of that company was $100,000. That company, in the course of its business, received Virginia bank notes until the military authorities took possession of the office and business was suspended. Witness' salary was paid in the same currency up to the year 1863, but during the spring and summer of 1862 this money was at a discount. Witness used Virginia money entirely until towards July, 1862, when the discount became heavy. In the autumn of 1861, witness' insurance company received gold and Virginia notes indiscriminately. The Alexandria Insurance Co. declared dividends 1st May, 1861, 1st Oct., 1861, 1st May, 1862, and 1st July, 1862. The company paid all its losses in Virginia money. In
23 March and April, 1862, paid six or eight thousand dollars losses in Virginia money.

The same witness, on cross-examination testified, that it was understood that Virginia money was the only money the Alexandria Insurance Co. received or paid. Witness does not remember that there was any special understanding as to the kind of money to be received and paid until after the 1st of January, 1862, when witness thinks a clause was inserted in the policies to the effect that losses were to be paid in Virginia money. Until July, 1862, the company

did a large business. The bulk of the business was the renewal of old policies, though some few new ones were issued.

The company began business again at the end of the war, but witness believes is now winding up its affairs.

Witness was also agent at Alexandria for the Insurance Company of the Valley of Virginia. Virginia currency was also received in the business of that company, and at the end of the war witness paid over the balance remaining in his hands in that currency. During the summer of 1861, and until September, specie was very plentiful in Alexandria, but it was seldom required, except for making change. Witness always used Virginia money in market, until September, 1861. Witness used to deposit gold and Virginia notes in
24 bank as cash, making no discrimination. No discrimination was made in the office of the Insurance company between gold and Virginia notes. In July, 1861, Virginia bank notes and specie were of equal value, and witness is not aware that any distinction was made in market. The receipts of the Alexandria Insurance Company were $3,000 to $4,000 per month. The company never made any difference or distinction between the different kinds of currency. Witness supposes that in June, July and August about one-fourth of the receipts of the company were in gold and silver, afterwards a smaller proportion.

Wm Ward witness

And the defendant further proved by Wm. Ward, the defendant, a competent witness, that he bought the Mount Zephyr estate in August, 1860, from the plaintiff. The estate, in Fairfax Co., Virginia about six miles from Alexandria, and adjoins Mount Vernon. Witness believes it was originally part of the Washington estate. Witness took possession of the estate in August, 1860, and lived there about four years. The estate was continuously in federal lines from the occupation of Alexandria until the end of the war. Soldiers fired the barn on the estate, and destroyed farming implements and crops. In consequence of this witness left Mount Zephyr in May, 1864, and returned to Baltimore, where he has resided since.

NOTE.—It was here admitted, by consent of counsel, on the
25 3d of May, 1861, William Ward paid to Francis L. Smith, administrator, $2,500 on account of his purchase of the Mount Zephyr estate by his (Ward's) check on the bank of the Old Dominion, and received Smith's receipt therefor, which witness produces.

$2,500.

Pd by Wm Ward on account

Received Alexandria, May 3d, 1861, of William Ward, esqr., his check for two thousand five hundred dollars, on the bank of the Old Dominion, to be credited on his purchase of the Mount Zephyr estate.

FRANCIS L. SMITH,
Adm. with the will annexed of Aaron Leggett.

It was also admitted that on the 6th of May, 1864, William Ward paid to Jonathan Roberts, sheriff of Fairfax Co., Virginia, $404 30, being arrears of taxes on the Mount Zephyr estate due, by the estate of Aaron Leggett, deceased, and that Ward is entitled to credit for that sum in his account with Smiths' administrator of Leggett.

The witness Ward continues: The first payment, of $3,500 made by witness at the Farmers' Bank on the 18th, July, 1861, was made by witness himself to Mr. Marbury, the cashier, in current Virginia bank notes. Witness was partial to the Farmers' Bank, and is confident that part of the amount paid was in notes of that bank,
26 but all the notes were equally good. The $3,151, credited 27th December, 1861, was paid in the same description of notes to Mr. Marbury, the cashier, who told witness that he had endorsed these credits upon one of the bonds. On the 26th March, 1862, witness sent $1,000 in the same description of money to said bank. Of this $925 were credited as before, and $75 were returned to witness, not being good money. Witness then, in a day or two afterwards, sent $75 to said bank in current Virginia bank notes.

In March or April, 1862—witness thinks April—he went to Marbury or the president of the bank and offered to pay the other bonds. Witness took with him about three or four thousand dollars, enough to pay the entire balance of his debt, principally in notes of the Farmers' Bank, and tendered them to the cashier or president, and offered to pay all the bonds. They stated that Gov. Pierpoint had served some order upon them, and they were doing no business. So they could not give witness the first bond, and they informed witness that they had not the other bonds. During 1861 and 1862 witness paid his farm hands in Virginia money; had no other money. Received payment for his crops in the same money. Francis X. Ward, witness' son, signed the notes as co-security. He was not the purchaser of the property. During the war witness had not always access to Alexandria. A pass was necessary, and could not
27 always be obtained; but any obstacle of this kind was merely temporary.

The same witness on cross-examination testified: That he bought the Virginia funds, which he deposited and tendered in payment of the bonds specially for that purpose. Witness cannot positively say what was the discount on Virginia money at the different times he bought it. Witness bought the Virginia money to make the July deposit at 7 per cent. discount; does not know why he did not pay at maturity the bond which fell due in February, 1861; does not remember why he let that bond lie over till July, 1861. The cashier told witness that the bond was in bank for collection, but not inform witness who owned the bond or whether it had been discounted or not.

Witness never saw the bond till lately, but took the cashier's word that it was at the bank for collection. Witness did not tender at bank, on the days when these three bonds respectively fell due, the exact amounts. In 1862 witness thinks he sold some portion of his crop to the government. In 1861 thinks he had no surplus crop to sell. When witness paid the last credits he bought the Virginia money at less than 20 per cent. discount. The $2,500 paid in May, 1861, witness bought at 2½ per cent. discount, and deposited it in bank expressly to pay that amount.

Re-examination in chief: When witness had the conversa-

28 tion with Marbury in July, 1865, he was anxious to settle the matter amicably. Witness knew the money was in bank to Smith's credit. Witness never offered to withdraw it. At the time witness paid $2,500 to Francis L. Smith, he does not think he appropriated it to any particular bond; has no particular recollection on the subject. The officers of the bank made no objection at any time to Virginia money, or the tender thereof. Witness is sure he did not ask for the bonds until he made the last tender of payment.

And the plaintiff further proved by Francis L. Smith, the plaintiff, a competent witness, that the bonds now in suit were made payable to him, because he was administrator of Leggett's estate. The present suit was brought in witness' name for the benefit of the estate. Witness is no longer administrator, his successor having been appointed in February, 1864.

Witness left Alexandria about the 20th of May, 1861, and remained within the confederate lines till the end of the war. Witness returned to Alexandria in June, 1865. The first information witness had concerning these payments made by Ward to the estate, was from Marbury himself at the bank, in the latter part of June, or early in July, 1865. Witness at once told Marbury that he could not affirm the transaction, and then wrote the letter to Ward, given in

29 evidence.

Some time in 1862, while witness was within the confederate lines, he received a letter from Ward, saying that he could not pay the bonds, because they were not at the bank. Subsequently, in 1863, witness received a second letter from Ward, saying that he had made deposits of Virginia money, and mentioned the amounts. Witness never knew that these payments had been endorsed as described until informed by Marbury.

Witness frequently saw Francis X. Ward during the war within the confederate lines.

NOTE.—It was admitted, by consent of counsel, that Francis X. Ward went to the south, and remained within the confederate lines during the greater part of the war. It was further admitted that Francis L. Smith was removed from his trust as administrator of Aaron Leggett, deceased, and Jamison was appointed in his stead in February, 1864, by the court in Alexandria having jurisdiction thereof.

The plaintiff's counsel then prayed the court to instruct the jury, as follows:

Plaintiff's prayers—No. 1.

That if the jury find from the evidence in this case that the the defendants executed the instruments in writing offered in evidence by plaintiff, and that the defendant, Wm. Ward, de-

30 posited at the office of discount and deposit of the Farmer's Bank of Virginia, in Alexandria, in the State of Virginia, the several sums of money, in the bank notes of Virginia banks, at the time, in the sums and manner as testified to by the witnesses Marbury,

and Ward, and that at the times of the several deposits so made, that the notes of Virginia banks were at a discount, and that said banks had suspended specie payments, and that these facts were known to the said Ward, that then the plaintiff is entitled to treat said deposits, and the endorsements made by the cashier on the first bond, as nullities, and to recover the principal sums due subject to the other credits, which the jury may find defendants entitled to.

Prayer No. 2.

That the defendants are not entitled to a credit for the deposits of the Virginia bank notes, as testified to before them, unless Mr. Marbury, the cashier, was authorized by the plaintiff to receive them in payment, and that such authority to Mr. Marbury cannot be implied from the fact that the first bond was delivered to Mr. Marbury for collection, or from the fact that the bonds were payable at the Farmers' Bank.

3. That notwithstanding the jury may find that the plaintiff, in May, 1861, went within the lines held by the military forces in insurrection against the United States, and remained there
31 until the conclusion of the war, yet the plaintiff is entitled to recover interest on such balances as the jury may find to be due on the several bonds of defendants, unless the jury should find that the defendants made a tender or payment in gold or silver or legal tender notes of the United States, of the full sum of principal and interest due, and payable on said bonds respectively, on the day that they became due.

4. That notwithstanding the jury may find that the plaintiff, in May, 1861, went within the lines held by the military forces in insurrection against the United States, and that William Ward, one of the defendants, remained within the military lines held by the forces of the United States, yet if the jury find the execution of the bonds read in evidence, the plaintiff is entitled to recover full interest on said notes on such balances as they may find due, provided the jury find the further fact that Francis X. Ward, one of the defendants, was also within the lines held by the military forces in insurrection against the United States during the same time that the said plaintiff was within the said lines.

31 5. That the jury must appropriate the payment of $2,500 made by the defendant, William Ward, to the plaintiff, on the 3d May, 1861, upon the first bond, then already over due.

6. That the jury cannot consider the tender alleged by the defendants to have been made in the month of March or April, 1862, by the defendants, to some officers of Farmers' Bank of Virginia, in the manner and mode as testified to by the said William Ward.

Plaintiff's prayer.

7. If the jury find from the evidence aforesaid that the bond due 22 Feb., 1861, was, when over due, in the hands of the Farmers' Bank of Virginia, in Alexandria, for collection for and on account of said

F. L. Smith, the obligee, therein named, without any instructions as to the funds to be received, and that on the 18th day of July, and the 27th day of December, 1861, and the —— days of March, 1862, the defendant, William Ward, made the deposits in Virginia bank notes, for the purpose and in the manner stated in the evidence, then said deposits cannot be credited in this action, provided the jury find that at the times of said deposits respectively. the said Ward had notice that said bank was but the agent of said Smith to collect said bond according to the tenor and legal effect
33 thereof, and provided they further find that no representation was made by any one to said Ward, that the said bank was the owner of said bond.

And the defendant's counsel prayed the court to instruct the jury as follows:

Defendant's prayers.

1. The defendants pray the court to instruct the jury that, by the tenor of the bonds of the defendants, given in evidence by the plaintiff, the office of discount and deposit of the Farmers' Bank of Virginia, at Alexandria, was constituted the agent of the plaintiffs to receive payment of said bonds, and that the defendants are entitled to a credit on said bonds for any payments which the jury may find were made on account thereof by said defendant, William Ward, to said office of discount and deposit, and were by said office so received and credited.

2. The defendants further pray the court to instruct the jury, that if they find that the plaintiff, as administrator, with the will annexed of Aaron Leggett, sold to the defendant, William Ward, certain real property in Virginia, known as the Mount Zephyr estate, and for the balance of the purchase money due thereon, rec'd from said William the three bonds given in evidence by the plaintiff, and that on the first of said three bonds, which fell due, the defendant, William
34 Ward. on the 31st of August, 1860, paid to the plaintiff the sum of $518 78, which was credited thereon by the plaintiff, and that after said bond became due, the said William Ward paid at the office of discount and deposit of the Farmer's Bank of Virginia, at Alexandria, to the credit of the plaintiff, as administrator, as aforesaid, and in part payment of the debt, represented by said bonds, the sums of $3,500, $3,151, $925, and $75, in bank notes of banks of the State of Virginia, at their par value at the times stated in the evidence of the witness Marbury, and the witness, William Ward, and that said sums were so received and credited on its bonds by said office of discount and deposit, and if the jury shall further find that said amounts, so paid and credited on some of them, were also by the cashier of said office credited on said bond which first fell due, and that said amounts were more than sufficient to pay said bond, then that said bond was paid in full, and that the plaintiff cannot recover thereon. and that the balance of said credits, after the payment in full of said bond, is to be applied to the payment of the

second and third of said bonds, in the order in which they fell due, and so far as said balance suffices to pay the same.

3. The defendants further pray the court to instruct the jury that if they find the facts stated in the second prayer, and if they shall further find that on the 3d of May, 1861, the sum of two thou-
sand five hundred dollars was paid by the defendant, William
35 Ward, to the plaintiff, to be credited on the purchase, by said William Ward, of the Mount Zephyr, as stated in the receipt given in evidence by the defendants, that then said sum of twenty-five hundred dollars is to be credited on the second of said bonds, which was drawn payable twelve months after date.

4. The defendants further pray the court to instruct the jury, that if they shall find that the plaintiff on and previously to the breaking out of the late civil war, was a citizen and resident of Alexandria, in Virginia, and soon afterwards, to wit, on or about the 20th of May, 1861, left Alexandria, and went into the lines of the confederate States, so called, and continued therein until the close of the said civil war, then the plaintiff is not entitled to recover interest on the promissory notes under seal, given in evidence by him in this case, or on any part thereof, from the period when he so went into the confederate lines until the end of the war.

5. The defendants further pray the court to instruct the jury, that if they find the facts stated in the second, third, and fourth prayers, and further find that in the month of April, 1862, the defendant, William Ward, tendered at the said office of discount and deposit, in Virginia bank notes, at their par value, payment in full of the bal-
ance due on said bonds, and that said office by its president or
36 cashier, refused to receive the same, on the ground that it had ceased to do business, that then the plaintiff is not entitled to recover interest on the balance which the jury may find to be due.

6. The defendants further pray the court to instruct the jury that if they find the facts stated in their second prayer, and further find that the credits on the said bond, which first fell due, were erased, as stated by the witness, Marbury, and without the authority of the defendants, that then said erasure was null and void, and does not impair the right of the defendants to the benefit of said credits.

7. The defendants pray the court to instruct the jury that if they find the facts stated in the second prayer, then that the bond which first fell due was paid in full, and the plaintiff cannot recover thereon.

The court thereupon rejected all the plaintiff's prayers, and all the defendant's prayers, and gave the following instructions to the jury:

Court's instructions.

If the jury shall find from the evidence in this case that the sealed notes, which have been given in evidence, were made and executed by the defendants, then the plaintiff is entitled to recover

the amount of the said notes, less the credit endorsed on the
37 first note, and the taxes paid def'ts, and the subsequent payment by check to plaintiff, with interest on the same;

to the granting of said instruction by the court, and to the court's refusal to grant the defendant's prayers, and each of them respectively, the defendants, by their counsel, prayed leave to except, and that the court would sign and seal this bill of exceptions, which is accordingly done, this fifteenth day of April, A. D. 1867.

[SEAL.] WILLIAM F. GILES.

And now here, at this day, to wit, the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-seven, the said William Ward and Francis X. Ward produced to the circuit court here the writ of the said United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

Writ of error.

38

39 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, between Francis L. Smith, plaintiff, and William Ward and Francis X. Ward, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-six.

40 Issued the 16th day of April, 1867.

JAMES W. CHEW
Clk Circuit Court.

41 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, the transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, William Ward, Francis X. Brenan and Charles A. Torrence, are held and firmly bound unto Frances L. Smith, in the just and full sum of thirty thousand dollars, to be paid to the said Francis L. Smith or his certain attorney, heirs, executors, administrators, or assigns, to the payment whereof, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 20th day of April, eighteen hundred and sixty-seven.

Whereas the said Francis L. Smith did obtain a judgment against William Ward and Francis X. Ward, in the circuit court of the United States for the fourth circuit in and for the Maryland district, at the April term thereof, in the year of our Lord one thousand eight hundred and sixty-seven, for the sum of fourteen thousand
42 three hundred and ten dollars, with interest and costs, from which judgment the said William Ward and Francis X. Ward have sued out a writ of error, returnable to the next term of the Supreme Court of the United States.

Now the condition of the above obligation is such, that if the said defendants shall not cause a transcript of the record and proceedings of the said circuit court to be transmitted to the said Supreme Court within the time appointed by law, and prosecute the said writ of error with effect; and also satisfy and pay the said Francis L. Smith, his heirs, executors, administrators, or assigns, in case the said judgment shall be affirmed, the debt and damages adjudged in the circuit court aforesaid, as also the debt and damages that may be awarded in the said Supreme Court, then the said bond to be and remain in full force and virtue, otherwise of no effect.

WM. WARD. [SEAL.]
F. X. BRENAN. [SEAL.]
CHAS. A. TORRANCE. [SEAL.]

Signed, sealed, and delivered in the presence of—
ARTHUR GEO. BROWN.

Endorsed: "Bond approved April 23d, 1867. William F. Giles."

43 The United States of America to Francis L. Smith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of

error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein William Ward and Francis X. Ward, are plaintiffs in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said William Ward and Francis X. Ward, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this 24th day of April, in the year one thousand eight hundred and sixty-seven.

[SEAL.] WILLIAM F. GILES.

I acknowledge notice of the above citation, April 25, '67.

R. J. BRENT,
For F. L. SMITH.

44 In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I herewith subscribe my name and affix the seal of the said circuit court this tenth day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] JAMES W. CHEW,
Cl'k Circuit Court.

[5-c. rev. st'p.]

Am Law Reg new ser v 6 p 106

In the Supreme Court of U. S.

December Term, 1868.

No. 117.

WILLIAM WARD

AND

FRANCIS X. WARD,

vs.

FRANCIS L. SMITH.

STATEMENT AND POINTS OF PLAINTIFFS IN ERROR.

ARTHUR GEO. BROWN,
F. W. BRUNE,
For Plaintiffs in Error.

Printed by Geo. Bunten and Company, 107 Baltimore-street, Baltimore.

In the Supreme Court of the U. S.

December Term, 1868.

No. 117.

WILLIAM WARD AND FRANCIS X. WARD,

vs.

FRANCIS L. SMITH.

STATEMENT AND POINTS OF PLAINTIFFS IN ERROR.

THIS case is brought by writ of error from the Circuit Court of United States, for the District of Maryland. It was an action of debt on three bonds of the Plaintiffs in Error, to which the plea of *nil debet* was pleaded with agreement to waive errors of pleading, and to give evidence of any facts admissible under any form of pleading.

The following are the principal facts:

In August, 1860, Wm. Ward bought from Defendant in Error, then Administrator of one Leggett, deceased, the Mount Zephyr Estate, in Fairfax Co., Va., adjoining Mount Vernon, (p. 12.)

To pay for it, Defendant in Error received three sealed notes or bonds, dated August 22d, 1860, each for $4,488\frac{66}{100}$, payable to him as Administrator, with interest, "at the office of discount and deposit of the Farmers' Bank of Virginia, at Alexandria," (pp. 5, 6,) in six, twelve and eighteen months, respectively.

Francis X. Ward, son of William Ward, signed the notes as surety, but was not purchaser of the property, (p. 13.)

About May, 20, 1861, Defendant in Error left Alexandria for the South, and remained within the Confederate lines until the end of the war, (p. 10.) Francis X. Ward also went to the South, (p. 14.)

Defendant in Error had kept both a private account and an account as Adm'r of Leggett, with the Branch of the Farmers' Bank of Virginia, at Alexandria; but, before leaving Alexandria, in May, 1861, he drew from the bank the amount standing to the credit of both accounts, (p. 8.) Prior to 1861, Defendant in Error had been, for several years, a Director of said Bank, and was re-elected during that year, (pp. 8, 10.)

Said Bank was but a branch of the parent bank at Richmond, which declared the dividends. In January, 1861, a dividend was so declared and paid by said bank, at Alexandria, in Virginia notes, (p. 8.)

Said bank suspended specie payments, Nov. 20, 1860, (p. 8.)

Feb. 6, 1861, the first of the bonds above mentioned, due 22d of the same month, was deposited in said bank by Defendant in Error for collection, with a small credit endorsed thereon, (p. 7.)

At that time drafts on Baltimore and New York, sold at 3½ or 4½ per cent. premium, (p. 8.)

The bank then paid its debts, and received payment of debts due it, in Virginia bank notes, and so continued to do up to March 21, 1867. The bank paid depositors in the same currency. If change was demanded for a note of large denomination, the Bank gave it in Virginia currency, (p. 8.)

When collections for Northern correspondents were made by the bank during the war, special instructions were generally received and followed as to funds to be accepted. Generally Northern drafts were demanded.

The only collection for a Virginia customer made by said bank between July 18th, 1861, and March 31, 1862, was paid in Virginia funds, (p. 8.) During that time, said notes were at a heavy discount, 22½ per cent. in December, 1861, and 23 per cent. in March, 1862, (p. 10.)

Some time in 1861, bank received payment for an over-drawn account in Virginia funds, (p. 8.)

The bank continued to take Virginia money up to March 21, 1867, in payment of debts due it; even when said money was worth only 25 cents on the dollar, (p. 9.)

When Defendant in Error deposited said bond for collection he gave no particular instructions, "it was left as in the ordinary course of business." (p. 7.)

The first payment by the Plaintiffs in Error on account of their bond debt, was made to Defendant in Error, in person by a check for $2,500 on the Bank of the Old Dominion, at Alexandria, May 3, '61. (See receipt p. 12.)

The notes for this payment Ward bought at 2½ p. c. discount, and deposited in said last mentioned bank expressly to pay that amount. (p. 13.)

When Defendant in Error went south he did not deposit the second and third bonds for collection; but it does not appear that Ward had any notice that the second and third bonds were not held by the bank for collection, until March or April, 1862, when he went to pay the balance due on them. (p. 13.)

During 1861 and 1862, Wm. Ward made certain payments on account of these bonds at the Farmers' Bank of Virginia, at Alexandria, in notes of banks of the State of Virginia, (p. 7,) some were notes of the Farmers' Bank itself; but all the notes were equally good. (p. 13.)

The bank exercised care and discrimination in accepting these notes, for on one occasion $75 were returned to Ward, "not being good money."

Their place was supplied by a like sum "in current Virginia bank notes" which were accepted. (pp. 7, 13.) These payments so made and accepted amounted to $7,651, and were entered on the Books of the Bank to the credit of Smith, as Adm'r. of Leggett and endorsed on the back of the first note, by Marbury the Cashier, (p. 7.) An exact transcript of the entries on the blotter of these payments is on p. 7, and (p. 9,) Marbury says: "These

credits were entered regularly on the blotter of the bank. Subsequently these entries were transferred to the day book and ledger. The bank has different blotters for different kinds of entries.

"The entries referred to were made in the blotter for money paid.

"These entries are in usual form of entries of money paid, and credited as paid. The marks in red ink on the back of the bond deposited in our bank indicate that said note was deposited for collection, and that it had not been discounted by the bank." "Witness, cannot assign any reason for not delivering the first note to Ward *when it was paid in full*, by these payments credited as described. Witness recollects nothing particular about it: but Ward could not have asked for the note or he would have received it."

In March or April, 1862, Wm. Ward offered to pay the balance due on the bonds. He says: (p. 13,) "Witness went to Marbury (Cashier,) or the President of the Farmers' Bank, and offered to pay the other bonds. Witness took with him about $3,000 or $4,000, enough to pay the entire balance of his debt, principally in notes of the Farmers' Bank, and tendered them to the cashier or president, and offered to pay all the bonds. They stated that Gov. Pierpoint had served some order upon them, and they were doing no business, so they could not give witness the first bond, and they informed witness that they had not the other bonds."

Testimony was taken showing that Virginia bank notes passed current in Alexandria in the ordinary transactions of life, long after the beginning of the war, and during the period covered by the payments made by Ward. Indeed that, for most purposes, it was the currency of the community.

When the Baltimore banks withdrew their funds from the Alexandria banks just prior to the war, they received Virginia notes, (p. 10.) Defendant in Error himself accepted, as we have seen, $2,500, of this depreciated currency, at its par value, from

Plaintiffs in Error. (pp. 12, 13.) During 1861 and 1862, Wm. Ward paid his farm hands in Virginia money; had no other money. (p. 13.) The Farmers' Bank received and paid out this money at its par value. (pp. 8, 9.)

McCormack testified (pp. 11, 12,) that he was Secretary of Alexandria Ins. Co., and Agent for others. That said companies received, paid, and deposited in bank specie and Virginia notes indiscriminately, making no distinction, until September, 1861. Until Sep. 1861, specie was plentiful; and witness always used Virginia bank notes in market. During June, July and August, 1861, about one-fourth of the receipts of Alexandria Ins. Co., were in gold and silver.

Receipts, and business were large, and dividends were declared during the war.

The Defendant in Error and Plaintiffs in Error each offered seven prayers, for instructions to the Jury, all of which were rejected: (pp. 14, 15, 16, 17:) and in lieu thereof, the Court granted certain instructions, (p. 17,) to the granting of which, and the Court's refusal to grant the prayers of the Plaintiffs in Error, and each of them, they excepted.

The Plaintiffs in Error will maintain, in opposition to the instructions of the Court below:

1. That when securities are left with a bank for collection the bank is, *ipso facto*, made the agent of the payee, to receive payment thereof. It is the agent of the payee, not of the payer.

Grant on Banking, 2, 3, 4.
Dunlap's Paley on Agency, 91, and notes.
Parsons' Merc. Law, 144.
Marine Bk. v. Fulton Bk., 2 Wallace, 252.
Marine Bk. v. Rushmore, 28 Ill., 463, 471.
Smith v. Essex Co. Bk., 22 Barb., 627.
Bank of Washington v. Triplett, 1 Peters, 25, 35.
Appendix to Rowe v. Young, 2 Broderip and Bingham, 184 (6 Eng. Com. Law Rep. 65,) (Best, J.)
Fitler v. Beckley, 2 Watts and Serg., 458.

2. The bank may release the payer by receiving payment in gold, silver, copper, drafts, or checks on other banks, or private bankers, bank notes of its own, or other banks, circulating at par or below par.

It matters not what may be the particular kind or forms of money accepted by the bank, its relation of agent towards its principal and the debtor ceases the moment the funds so received are mingled with its own funds and credit is given on its books for the amount so collected as cash.

The relationship of debtor and creditor from that moment subsists between the bank and its former principal, and the bank is liable for the full amount so credited.

Edwards on Bailments, 66.
Story on Bailments, Sec. 88.
Parsons' Merc. Law, 144.
Wallace v. McConnell, 13 Peters, 136, 150.
Bk. of U. S. v. Bk. of Georgia, 10 Wheaton, 333, 341, 344, 346, 347.
Levy v. Bk. of U. S., 4 Dallas, 234.
Marine Bk. v. Binney, 28 Illinois, 90.
Marine Bk. v. Rushmore, 28 Illinois, 463.
Tinkham v. Keyworth, 31 Illinois, 522.
Robinson v. Beall, 26 Georgia, 17.
Marine Bk. v. Fulton Bk., 2 Wallace, 252.
Lowry v. Murrell, 2 Porter, (Ala.,) 280.
Honorè v. Colmesnil, 1 J. J. Marsh, (Ky.,) 506, 523.
Bk. of Northern Liberties v. Jones, 42 Penna., 537.

3. It was stipulated in the bonds that they should be payable at the Farmers' Bank; and it was thus made part of the contract that all the bonds should be deposited in that bank by the payee,

Smith, at maturity, or before; so that the obligors might be able to make payment of them at the bank, according to the law and usage of banks, in making collections and receiving payments.

Wallace v. McConnell, 13 Peters, 150.
Fitler v. Beckley, 2 Watts & Serg., 458, 462.
Brabston v. Gibson, 9 Howard, 263, 279.
Swift v. Hathaway, 1 Gallison, 417.

4. It is not pretended that the payee, Smith, gave any instructions to the bank, or made any communication to the obligors, attempting to modify or qualify the general law and practice of banks in reference to such matters.

5. The first payment of $2,500, on May 3, 1861, which was made to Smith, himself, and which is, of course, admitted to be a valid credit, is shown, by the receipt of Smith, to have been paid and received on account of the debt generally.

At that time, the first bond for $4,488 67/100, and interest, less $518 78/100, was over due, and held by the Farmers' Bank for collection. But this payment was not credited on that bond, nor was the bank in any way notified of it.

The second and third bonds were then in possession of Smith; and, as he made no application to have the payment credited on the bond in the possession of the bank, it may be contended that this was, in effect, an application of it to the bonds retained by him. But, if by law the application would now be made to the bond then due, it would leave less than the sum of $1,600 due on the 18th of July, 1861, when the first credit for $3,500, was given by the bank, which last mentioned credit was more than sufficient to extinguish the debt on the first bond, and left $1,900, to the credit of the obligors on the second bond; which, by the contract, was to be in bank on or before the 22d day of August following the day of its maturity, for payment.

The Plaintiffs in Error contend that they have the right and the full benefit of this credit of $3,500, partly to pay in full the note held by the bank for collection, and partly to meet the next note, not yet due, but which the Defendant in Error had contracted should be placed in the same bank for collection, at its maturity.

6. The Plaintiffs in Error further contend that the payment of December 27, 1861, of $3,151, is a proper credit on the second of these bonds, falling due August 22, 1861, so as to extinguish fully the balance, if less than $3,000 remaining due on said bond, after crediting on it the balance of $1,900 remaining, after paying the previous bond, and leaving the sum of upwards of $200 to be applied to the last bond, falling due Feb. 22, 1862.

7. They also contend that, in addition to this small balance, the credits of $1,000 in March, 1862, are also applicable to this third or last bond.

8. If it should be held that Smith, by giving the receipt for the $2,500 paid upon the 3d of May, 1861, and by not informing the bank of this payment, and leaving it to enforce the payment of the first bond in full, and making no deposit of this payment, but taking the other two bonds with him into the enemy's lines, is to be considered as having applied this payment of $2,500 to the bond falling due in August, 1861, then the Plaintiffs in Error will contend that they are entitled to apply the credit of July 18th, of $3,500, to the bond due 22d February, 1861, which was held by the bank, and so much of the credit

of the 27th December, 1861, of $3,151, as would be required (in addition to the credit of $518,$\frac{75}{100}$, thereon endorsed,) to pay the same in full.

And the Plaintiffs in Error will then contend that the surplus of the credit of Dec. 27, 1861, should be applied to the bond falling due in August, 1861, so as, with the credit of $2,500 already mentioned as credited on said bond, to extinguish it, and leave a small balance applicable to the third bond.

This view is also somewhat supported by the credit on the books of the bank, of December 27, 1861; for it is there stated to be applicable, particularly to the bond due in February, 1861.

9. The Plaintiffs in Error also rely on the offer and effort of William Ward, in March or April, 1862, to pay the balance due on the last bond.

Not as strictly a legal tender; but, as a defence to a claim for interest, on any balance found to be due for the period while Smith was within that part of Virginia which was in insurrection against the United States, when taken in connection with the following facts:

That two of the bonds were not deposited in the bank, according to contract, and that the payee, Smith, had, from May 20, '61. until the close of the war, placed himself, with the second and third bonds, within the enemy's lines, and thus made it illegal to deal with him.

10. Finally, the Plaintiffs in Error will contend that the Court below erred in instructing the Jury that the Plaintiffs in Error were not entitled to the benefit of any of the credits or pay-

ments, either at their par or actual value, except the three credits mentioned in said instruction; and in holding Plaintiffs in Error liable for interest, on the entire balance, during the war.

Jackson Ins. Co. v. Stewart, 15 Am. Law Reg., (6 New Series,) 732, and note 735.

Tucker v. Watson, 15 Am. Law Reg., (6 New Series,) 220.

Brewer v. Hastie, 3 Call, 22.

Hoare v. Allen, 2 Dallas, 102.

Foxcraft v. Nagle, 2 Dallas, 132.

Letter of Mr. Jefferson, 1 Am. State Papers, pp. 257, 304–312.

Code of Virginia, 1860, Tit. 18, ch. 58, p, 343, secs. 15, 16.

ARTHUR GEO. BROWN,
F. W. BRUNE,
For Plaintiffs in Error.

No. 117.

Supreme Court United States.

December Term, 1868.

WILLIAM WARD AND FRANCIS X. WARD,

PLAINTIFFS IN ERROR,

vs.

FRANCIS L. SMITH.

BRIEF OF DEFENDANT IN ERROR.

In Error to the Circuit Court District of Maryland

Francis L. Smith, the Defendant in Error and Plaintiff below, sued the Wards on three joint and several bonds, signed by them 22d of August, 1860, each for $4,488 67, and severally due in six, twelve and eighteen months after date, all bearing interest from date.

Pages 5 and 6.

All errors in pleading were released.

Page 4.

Each of the Bonds was payable on its face at the office of the Farmers' Bank of Virginia, at Alexandria.

The evidence disclosed the facts that on the 6th of February, 1861, the first bond not yet due was deposited by the Plaintiff below for collection in said Farmers' Bank, at Alexandria. It is to be noted that the Bond was not assigned to the Bank as commercial paper usually is, and when deposited, there was a credit endorsed of $518.78.

Upon the back of this Bond appeared heavy erasures, which were illegible; and for the purpose of explaining them the Plaintiff below proved by the Cashier of the Farmers' Bank, that they were put there by him and afterwards erased by him without the request or knowledge of Plaintiff.

Pages 6 and 7.

These erasures obliterated credits, which Mr. Marbury, the Cashier, had endorsed on the back of the Bond, as follows:

1861, July 18, ...	$3,500
Dec. 27, ...	3,151
1862, March 26, ...	925
31, ...	75
	$7,651

Their aggregate exceeded the Bond deposited by over $3,000.

The office of the Farmers' Bank at Alexandria was only a branch of the Mother Bank, which was at Richmond.

It was admitted (p. 10 of Record) that the Plaintiff below, in May, 1861, went into the Confederate military lines and there remained during the whole war, though not in the military service.

It was further admitted (p. 10) that Virginia Bank notes were at a discount on July 18, 1861, of 11 per cent.; on December 27, 1861, of 22½ per cent., and March 26 and 29, 1862, of 23 per cent. The evidence disclosed that these Bonds were given for the purchase money of a tract of land called Mount Zephyr, near Mount Vernon, sold by the Plaintiff below as Administrator of Aaron Leggett to Wm. Ward, who, on giving the bonds, entered into possession of the land, and has so continued until the present time, receiving and enjoying its profits and rents.

See Defendant William Ward's testimony, page 12,
And Smith's testimony, page 14.

The Court rejected all the prayers of Plaintiff and Defendants, and granted a short and decisive prayer to the effect, "that if the jury find the execution of the sealed notes, then the Plaintiff is entitled to recover their amounts, less the credit endorsed on the first note, and the taxes paid by Defendants and the subsequent payment by check to Plaintiff with interest on same."

Pages 17 and 18.

The Plaintiff in error has thus obtained the benefit of all the credits he claimed except the disputed payments in notes of suspended and insolvent banks.

Did the Court err in thus treating the case?

First Question.—*There was no error in ruling out all the other credits claimed by Defendants.*

These disputed credits consisted of unauthorized deposits by the Defendant, W. Ward, of depreciated notes of Insolvent Virginia Banks.

Mr. Ward himself swore that he bought all the Virginia funds which he deposited in the Farmers' Bank in alleged payment of these Bonds, specially for that purpose; that he paid 7 per cent. discount on the funds which he deposited in July, 1861.

Page 13.

This amount was $3,500.

See page 7.

And he further swears, that when he paid the last credits he bought the Virginia funds at less than 20 per cent. discount, say at 19 per cent. discount.

We thus have his net profits, as follows:

7 per cent. on $3,500, . . .	$245.00
19 per cent. on $4,151, . . .	788.69
	$1,033.69

Mr. Marbury states that the Farmers' Bank suspended in November, 1860.

Page 8.

And Mr. Ward swears that he made his deposits (in 1861 and 1862) in Farmers' Bank notes, or equally good notes.

See page 13.

The depreciation of all Virginia Bank notes is conceded to be correctly shown in the statement of Mr. Harris, by which their depreciation on the respective days of these deposits were from 11 per cent. to 23 per cent. discount.

Page 10.

It is also admitted that the Banks in Baltimore, New York, Philadelphia and Boston suspended 30th December, 1861.

Page 10

And Mr. Marbury shows that after the 24th May, 1861, Virginia funds were no longer current in Alexandria (p. 7) and on 18th July, 1861, (date of first deposit by Ward) purchases could only be made with such funds at a discount.

Page 8.

During the whole period in review, Northern drafts were at a large premium.

Pages 8 and 9.

But the stipulation of parties (on page 10) concluded the Defendants from denying that on the identical days when the deposits were respectively made, the funds deposited were at a discount of from 11 to 23 per cent.

There was nothing to be tried by the jury upon this concession.

And the question simply is, whether a debtor on three notes payable at a particular Bank, where only one of the notes is left for collection, has a right to deposit depreciated notes of suspended banks in payment of one or all of these notes ?

The very statement of the question would seem to furnish its own answer.

So far as relates to the first note which was deposited for collection, the Bank may have had an implied authority to collect it in currency; but that did not authorize the receipt of notes of Insolvent Banks.

In 13 Wendell, 101, it was held that the payment of a check made by a Bank in a Bank bill which was current in the place of payment, could be treated as a nullity when in fact the Bank issuing the bill had suspended the day before, but both parties were ignorant of the suspension and acted in good faith, and the nullity of this payment was maintained by the Court so far as the holder of the Bank bill had failed to realize the amount of the bill, he having realized some 33 per cent. on it from the Receiver of the Bank.

The Court in that case held that, "the principle of treating Bank bills as money only, applies so long as the Bank by which they are issued continues to redeem them in specie, and no longer, and this whether the holder is aware of the stoppage of the Bank or not."

13 Wend. 105.

Chief Justice Holt declared in 2 Raymond, 930, that, "where a servant is sent to receive money on a bill he cannot accept a note instead of money without the particular directions of his master."

And he further decided that, "if the master returns the note which his servant has taken, it is no payment."

To the same effect is

Story on Agency, §§ 98 and 101.

The principle of the case in 13 Wendell, 105, so far as it *ignores* the *scienter* of the party paying current Bank notes in ignorance of the stoppage of the Bank. seems to be sanctioned by the Courts of Maine, Vermont and New Hampshire.

22 Maine, 88.
11 Vermont, 576.
9 New Hampshire, 365.

This is held to be the true doctrine.

2 Parsons on Notes, 190 and notes.
Story Prom. Notes, § 389, note 2.

But denied in Pennsylvania, Tennessee, Virginia, Louisiana and Massachusetts.

See Smith on Mercantile Law, p. 528, note (ch. 13, § 2).

But in our case the scienter is not only shown by the stipulation of the parties as to the notorious depreciation of Virginia funds in the market, but by the evidence of the Defendant Ward, that he had purchased this paper at a large discount for the special purpose of making this payment.

There can be no doubt that a Bank receiving notes for collection is agent for the owner, but only *pro hac vice* to receive payment in money, and when that is collected the debtor is discharged. This principle explains

22 Barbour, 627, and cognate cases.

Here, all the authority is to collect the note according to its tenor, and being payable in *dollars* on its face, there is no authority to take anything which is not dollars, or at least notes of solvent Banks, current as money.

In 13 Iowa Rep. 256, this identical case is decided, and it was held that in the absence of instructions the Collecting Agent could not receive current funds, but must receive money or coin at its true value, and the case seems borne out by the authorities cited.

Again: upon the conceded facts in this case, the Defendant Ward knew that the Bank held his note, payable in dollars, and that he was offering, and the officers of the Bank were receiving, less than dollars.

This conduct in the absence of the creditor, and actuated as it was by an avowed special purpose to pay in depreciated paper, is in itself sufficient to invalidate the attempted payment.

But here is payment in the currency of Virginia Banks. In the face of the Act of Congress prohibiting commercial intercourse with the rebellious States, such notes were illegal and worthless for any legal purposes on the day of being deposited.

The holder, Smith, was not bound by this improper tender or deposit, until he had an opportunity to accept or reject it.

Sloan *vs.* Petrie, 16 Illinois, 262.

But the payments and tender were all made in the notes of the Virginia Banks, and principally in the notes of the Farmers' Bank, for Mr. Ward so swears.

Page 13.

To give validity to notes of these Banks which were within the lines of the enemies of the United States was to strengthen and maintain the resources of the public enemy.

Hanger *vs.* Abbott, 6 Wal. 535.

But Mr. Ward seems to think that the payments and tender acquired additional validity from the fact that they were made in the notes of the Farmers' Bank, which was the designated agent to receive payment; but the principle of law is universal, that a debtor cannot discharge his debt to his creditor by offsetting to the agent of creditor the debtor's claim against such agent.

Bartlett *vs.* Pentland, 10 B. &Cress. 769.
Scott *vs.* Irving, 1 B. & Adol. 614.
Story on Agency, §§ 98, 99.

Here the Plaintiff was not aware of the deposit or presumed to have any notice of it, as he was inaccessible to any legal notice.

He had left one note for collection, and all he could suppose was that the note had been paid in money or dishonored. So far as the two other notes were held by him, he might suppose a legal tender was made at the Bank on the day of their maturity.

The proof shows that Smith received a letter from Ward in 1862, across the lines, saying he could not pay the bonds because they were not at the Bank, and in 1863 he received another letter saying he had deposited certain amounts of Virginia money, but did not say that the deposits were credited on the bonds.

See page 14.

But the Plaintiff could not then reply to or repudiate such a statement as to the mere fact that Ward had deposited certain amounts in Virginia money.

As soon as he learned from Mr. Marbury, in June, 1865, of those deposits being endorsed as credits, he repudiated the transaction in the most decided manner, and on 7th July, 1865, wrote Mr. Ward his letter of that date.

See pages 9 and 10.

So far as relates to the two bonds not deposited, the same considerations exclude the idea that the deposits in the Farmers' Bank could be considered as either payment or legal tender

In 13 Peters, 150, it is decided that Mr. Ward could have deposited the money in the Farmers' Bank, although the notes were not there; in that way he could relieve himself from interest and costs, and in page 148 this Court said that "if the maker was at the place at the time designated, ready and offered to pay the money, it was matter of defence on his part"

The Judge, therefore, was right in holding all these deposits *as nullities.*

SECOND POINT.—*Interest was legally due on all these notes.*

The first note matured in February, 1861, and the defendants failed to pay it, although it remained over-due, and in the Federal lines during the whole war.

There can be no good reason why interest should not run on that note.

All liquidated demands bear interest in law.

7 Wendell, 109.
20 " 151.
Lefferly *vs.* Stewart, 50 Barb.

But it will be argued that interest is suspended during the war, because Smith, the legal holder, was in the Confederate lines.

All the learning in favor of this proposition will be found embodied in the following cases:

Tucker *vs.* Watson, 6 American Law Register (New Series) page 223.
Hanger *vs.* Abbott, 6 Wal. 535.

To apply such a principle to this case would be grossly unjust, because Ward was the *vendee,* in full possession of the land in payment of which these notes were given.

In such a case the Courts of Virginia have held that interest will run though the payment of the principal was delayed by an adverse claim.

Selden *vs.* James, 6 Rand. 465.
Brockenborough *vs.* Blythe, 3 Leigh, 619.
Oliver *vs* Hallows, 1 Grat. 298.

In this case the principal debtor, Ward, could have protected himself from interest by paying the money at Alexandria, where it was made payable, and which was in the lines. The property sold and the place of payment were all on this side of the belligerent lines, and Smith but a naked trustee.

Surely Ward ought to pay interest as an equivalent for the use of the land. But one of the makers, Francis X. Ward, was with the Plaintiff Smith, on the other side of the lines and in such a case the interest runs as decided in

Paul *vs.* Christie, 4 H. & McH. 161.

Even if the principle that interest is not recoverable during war between the respective Governments of the creditor and debtor should be held as firmly established, it can only be based upon the doctrine that no commercial intercourse shall be had between public enemies; and it only applies where the money is to be paid to the belligerent directly.

But where the creditor previous to the war has named or appointed an agent to receive payment, of the same citizenship with the debtor, then the latter cannot defend himself.

If the debtor pay to the agent, *non constat* that the agent will violate the law by remitting to his alien principal.

Thus no principle of public policy was contravened if Ward had paid or tendered the money at the office of the Farmers' Bank at Alexandria, because the agent and himself were both in the Federal jurisdiction; and the reason of the rule prohibiting intercourse with the enemy applied as between Mr. Marbury, the Cashier, and Mr. Smith, inhibiting any intercourse between them, and not to the relation between Ward and the Bank. This is clear upon authority.

Conn. *vs.* Penn, Peters C. C. Rep. 553.
Dennison *vs.* Imbrel, 4 Wash. C. C. 399.

To deprive the Plaintiff of interest would be to punish his *cestui que trusts.*

R J. & J. L. BRENT,
For Defendant in Error.